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June 27, 1956

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CONCORD, N.H.

Stanton C. Otis, Right-of-Way Engineer  
Department of Public Works and Highways  
State House Annex  
Concord, New Hampshire

Dear Mr. Otis:

Under date of May 24 you advised that your department has engaged an outside firm to microfilm all records to reduce storage files and you asked whether your large plan sheets on linen cloths must be retained after they are micro-filmed.

RSA 299:17 gives to the Commissioner of Public Works and Highways a limited authority to destroy "any labor returns and bills against the state highway department which have been on file in his office for more than six years and which, in his opinion, are no longer of any value to the state."

Your attention is called to the provisions of Chapter 258 of the Laws of 1955 authorizing the establishment by the Governor of "a bureau for the mimeographing, photostating, multilithing, microfilming, or reproducing by any other similar methods, of forms, letters, papers, reports and the like for the various state departments and agencies."

I do not understand that this bureau has been set up.

By the enactment of Chapter 231 of the Laws of 1955 approving the acts of the codifiers, the legislature has assented to the proposition that Chapter 229 of the Laws of 1947, the act to provide for the elimination of unnecessary and obsolete records and reports, was a purely temporary measure depending entirely upon the existence and life of the appropriation therefor and that such authority is no longer in existence.

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Accordingly, there is no authority for the Highway Department to destroy original records even under the new 1955 procedure which is not yet in force.

Please note that this is in some measure inconsistent with my opinion of December 6, 1954 to Frank D. Merrill, the then Commissioner of Public Works and Highways to the extent that such inconsistency exists, this later opinion controls.

With respect to recording of copies of plans in the various registry of deeds, our recent difficulties in proving Dudley's survey notes and Dudley's plan in the recent case of State of New Hampshire v. William Goss Brown and Carroll Jonathan Brown, have borne out how wise a requirement this county registry of deed recording is.

If we are to be dependent upon the memories of personnel in the Right-of-Way Division of the department entirely we are going to have difficulties in proving records.

In view of these facts, this office would have to oppose any legislation which would authorize the destruction of linen cloth sheets and original plans of state property. It is, of course, possible that legislation might be enacted authorizing your department to keep microfilm copies, reproducible to scale, and file the originals either in the registry of deeds of the counties concerned, or possibly in the New Hampshire Historical Society or State Library.

As a corollary to your inquiry, and my reference to the Dudley survey of the Ocean Boulevard, since it appears that Mr. Dudley's son is the only person now alive who can identify, as Dudley's original plan and survey, the notes and blue print which we have, I propose to take deposition in perpetual remembrance as provided in RSA 518.

Very truly yours,

George F. Nelson  
Assistant Attorney General

GFB:W